



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2020-0435]**

**RIN 1625-AA00**

**Safety Zone; Patuxent and Patapsco Rivers, Solomons, MD, and Baltimore, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to establish two temporary safety zones for certain waters within the Captain of the Port Maryland-National Capital Region Zone.

This action is necessary to provide for the safety of life on these navigable waters of the Patuxent River at Solomons, MD, on September 5, 2020, (with alternate date of September 6, 2020), and Patapsco River (Inner Harbor) at Baltimore, MD, on October 2, 2020, (with no alternate date), during fireworks displays. This proposed rulemaking would prohibit persons and vessels from being in the safety zones unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2020-

0435 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410-576-2674, email [Ronald.L.Houck@uscg.mil](mailto:Ronald.L.Houck@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background, Purpose, and Legal Basis**

The Solomons Business Association, of Solomons, MD, notified the Coast Guard that it will be conducting a fireworks display on September 5, 2020, at 9 p.m. The fireworks display is to be launched from a barge located in the Patuxent River, near Solomons, MD. In the event of inclement weather, the fireworks display will be rescheduled for September 6, 2020. Hazards from the fireworks display include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP Maryland-National Capital Region has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within 200 yards of the fireworks barge.

The Baltimore Office of Portion and The Arts, of Baltimore, MD, notified the Coast Guard that it will be conducting a fireworks display on October 2, 2020, at 9 p.m. The fireworks display is to be launched from a barge located in the Patapsco River (Inner Harbor), at Baltimore, MD. Hazards from the fireworks display include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP Maryland-National Capital Region has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within 100 yards of the fireworks barge.

The Coast Guard is requesting that interested parties provide comments within a shortened comment period of 15 days instead of the more typical 30 days for this notice of proposed rulemaking. The Coast Guard believes a shortened comment period is necessary and reasonable to ensure the Coast Guard has time to review and respond to any significant comments submitted by the public in response to this NPRM and has a final rule in effect in time for the scheduled event.

The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### **III. Discussion of Proposed Rule**

The COTP proposes to establish two temporary safety zones for certain waters within the Captain of the Port Maryland-National Capital Region Zone, as described in 33 CFR 3.25-15. This rule would be effective from 8:30 p.m. on September 5, 2020, through 10 p.m. on October 2, 2020, and would be enforced during the times described below for each zone.

The safety zone for the fireworks event at Solomons, MD, would be enforced

from 8 p.m. to 10:30 p.m. on September 5, 2020, or if necessary due to inclement weather on September 6, 2020, during those same hours. This zone would cover all navigable waters of the Patuxent River within 200 yards of the fireworks barge in approximate position latitude 38°19'18" N, longitude 076°27'45" W, located approximately 700 feet from shore at Solomons, MD. The duration of the regulation and enforcement of the safety zone is intended to ensure the safety of vessels on these navigable waters before, during, and after the scheduled 9 p.m. to 9:30 p.m. fireworks display.

The safety zone for the fireworks event at Baltimore, MD, would be enforced from 8 p.m. to 10 p.m. on October 2, 2020. This zone would cover all navigable waters of the Patapsco River, Inner Harbor, within 100 yards of the fireworks barge in approximate position latitude 39°17'01.54" N, longitude 076°36'31.81" W, located approximately 290 feet southwest of Inner Harbor pier 3, at Baltimore, MD. The duration and enforcement of the safety zone is intended to ensure the safety of vessels on these navigable waters before, during, and after the scheduled 9 p.m. to 9:08 p.m. fireworks display.

No vessel or person would be permitted to enter these safety zones without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

#### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, duration, and time-of-day of the safety zones, which would impact only small designated areas of the Patuxent River and the Patapsco River (Baltimore Inner Harbor) for a maximum of 7 enforcement hours, during the evening when vessel traffic is normally low. Moreover, the Coast Guard will issue Local Notices to Mariners and a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zones.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and

preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves two safety zones lasting a total of 5.5 enforcement hours that

would prohibit entry within portions of the Patuxent River, and Patapsco River (Inner Harbor). Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.



We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0435 to read as follows:

**§ 165.T05-0435 Safety Zones; Fireworks Displays in the Coast Guard Captain of the Port Maryland-National Capital Region Zone.**

- (a) *Locations.* The following areas are a safety zone. All coordinates are based

on datum NAD 83.

(1) *Safety zone 1.* All navigable waters of the Patuxent River within 200 yards of the fireworks barge in approximate position latitude 38°19'18" N, longitude 076°27'45" W, located approximately 700 feet from shore at Solomons, MD.

(2) *Safety zone 2.* All navigable waters of the Patapsco River, Inner Harbor, within 100 yards of the fireworks barge in approximate position latitude 39°17'01.54" N, longitude 076°36'31.81" W, located approximately 290 feet southwest of Inner Harbor pier 3, at Baltimore, MD.

(b) *Definitions.* As used in this section---

*Captain of the Port (COTP)* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

*Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing any safety zone described in paragraph (a) of this section.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter either safety zone described in paragraph (a) of this section while being enforced unless authorized by the COTP or the COTP's designated representative. All vessels underway within a safety zone at the time enforcement is activated for that zone are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band

Radio VHF–FM channel 16 (156.8 MHz).

(3) Those in a safety zone during enforcement must comply with all lawful orders or directions given to them by the COTP or the COTP’s designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement periods.* (1) Paragraph (a)(1) of this section will be enforced from 8 p.m. to 10:30 p.m. on September 5, 2020, or if necessary due to inclement weather on September 5, 2020, from 8 p.m. to 10:30 p.m. on September 6, 2020.

(2) Paragraph (a)(2) of this section will be enforced from 8 p.m. to 10 p.m. on October 2, 2020.

Dated: August 4, 2020.

Joseph B. Loring,  
Captain, U.S. Coast Guard  
Captain of the Port Maryland-National Capital Region.

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